

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JUL 10 2015

Clerk, U.S. District Court
District Of Montana
Missoula

SHAWN RYAN COWAN,

CV 15-17-H-DLC-JTJ

Petitioner,

vs.

ORDER

GOVERNOR STEVE BULLOCK,

Respondent.

United States Magistrate Judge John T. Johnston entered his Findings and Recommendation on March 14, 2015. Cowan objected to the Findings and Recommendation on April 6, 2015, and so the Court will conduct *de novo* review of the record. 28 U.S.C. § 636(b)(1). The portions of the findings and recommendations not specifically objected to will be reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). For the reasons listed below, the Court adopts Judge Johnston's Findings and Recommendation in full. Since the parties are familiar with the facts of this case, they will only be repeated below as necessary to explain the Court's order.

Cowan filed a motion to proceed in forma pauperis and a petition for

preliminary injunction for declaratory relief. Federal Rule of Civil Procedure 3 requires the filing of a complaint to commence a civil action. Judge Johnston liberally construed Cowan's filings as a civil complaint. Cowan objects to this determination, arguing that he did not intend to file a civil complaint. Cowan reiterates that his filings made for the purpose of requesting an order from the Court directing Governor Bullock to uphold the law. To the extent Cowan seeks redress without alleging any injury and without filing a complaint, that is not a remedy available in this Court. Cowan has also failed to file a copy of his inmate trust account statement for the six-month period immediately preceding his filing as required by 28 U.S.C. § 1915(a)(2), and as such his application to proceed in forma pauperis is insufficient and the Court will deny it.

Cowan further objects that Governor Bullock has failed to investigate and correct alleged violations of Cowan's constitutional rights. Cowan further objects that he seeks redress of the alleged constitutional injuries. Cowan also makes reference to his allegedly unlawful incarceration in his objections. Despite Cowan's assertions otherwise, a determination in this Court regarding whether Cowan's rights were violated during his criminal proceedings would imply the invalidity of those convictions. None of Cowan's convictions have been reversed, declared invalid, expunged, or called into question. As such, Cowan's claims are

claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). These defects cannot be cured by amendment.

Cowan next objects to the recommendation that this dismissal constitute a strike under 28 U.S.C. § 1915(g). As stated in Judge Johnston's Findings and Recommendation, Cowan has filed two cases in this district with similar allegations, both of which have been dismissed. Filing the instant case with similarly frivolous allegations is malicious.

Lastly, Cowan has also filed a motion to strike the Findings and Recommendation based on the allegations that it misrepresents material facts and discriminates against Cowan. Cowan further alleges in his motion that the Findings and Recommendation appear to be intended to alter his perception of reality. There being no evidence of misrepresentation, discrimination, or intent to confuse, the Court denies the motion to strike.

There being no clear error in Judge Johnston's remaining Findings and Recommendation,

IT IS ORDERED that Judge Johnston's Findings and Recommendation (Doc. 3) are ADOPTED IN FULL.

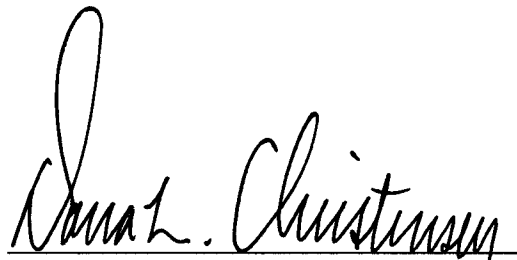
IT IS FURTHER ORDERED that Plaintiff's motion to proceed in forma pauperis (Doc. 1) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion to strike (Doc. 5) is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the docket shall reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Plaintiff's claims are frivolous.

DATED this 10th day of July, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looping initial "D".

Dana L. Christensen, Chief Judge
United States District Court